92-1460

No. _____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1992

DEXTER DRAKE COFFIN, III; DOE; and, JOE,

Petitioners,

V.

EDWARD W. MURRAY; E. C. MORRIS;
and, LOU ANN WHITE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did The Circuit Court Ignore Stipulated Facts, Make Incorrect Factual Findings And Then Apply An Incorrect Legal Analysis To Those Facts Which Are Material To A Just Resolution Of The Case?

2. Does The Fourth Circuit's Judgment Here Conflict With The Established Precedent Of This Court And With Recent Judgments Of Other Circuits?

3. Are The Issues Presented Herein Sufficiently Important To Warrant This Court's Review?

4. Did The Court Below Err In Concluding That The DOC's Application Of The Credits In Issue Is Consistent With The Legislative Intent?

LIST OF PARTIES

The parties to the proceedings below were the petitioners, Dexter D. Coffin, III, a former inmate of the Virginia Department of Corrections; Inmate "Doe"; and, Inmate "Joe".[1] The respondents were Edward W. Murray, Director of the Virginia Department of Corrections (DOC); E. C. Morris, Deputy Director, Division of Adult Institutions, DOC; Lou Anh White, Manager, Court and Legal Services, DOC; and, Unknown Administrative Personnel, DOC. The respondents were each sued in their individual capacities.

The parties before the Court remain the same except with respect to the Unknown Administrative Personnel who the petitioners view as unnecessary to the consideration and resolution of their petition.

[1] For reasons related to their security, the pseudonyms "Doe" and "Joe" were directed to be substituted for two petitioners' actual names by Order of the Circuit Court dated January 19, 1993.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATUTES INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	9
I. The Circuit Court Ignored Stipulated Facts, Made Incorrect Factual Findings And Then Applied An Incorrect Legal Analysis To Those Facts Which Are Material To A Just Resolution Of The Case	9
II. The Fourth Circuit's Decision Here Does Conflict With The Established Precedent Of This Court And With Recent Judgments In Other Circuits	13
III. The Issues Presented Herein Are Sufficiently Important To Warrant This Court's Review	14
IV. The Court Below Erred In Concluding That The DOC's Application Of The Credits In Issue Is Consistent With The Legislative Intent	16
CONCLUSION	21
APPENDIX (Opinion and Judgment of the Court of Appeals; Final Order of the District Court; and, Stipulated Facts of the Parties)	1a

TABLE OF AUTHORITIES

Arkansas v. Oklahoma, 503 U.S. ___ (1992) 14

Bell v. Wolfish, 441 U.S. 520 (1979) 11

Block v. Rutherford, 468 U.S. 576 (1984) 11

Board of Regents v. Roth, 408 U.S. 564 (1972) 15

Cajun Elec. Power Coop. v. F.E.R.C.,
924 F.2d 1132 (D.C. Cir. 1991) 13

City of St. Louis v. Dept. of Trans.,
936 F.2d 1258 (8th Cir. 1991) 13

Ct. Board of Pardons v. Dumschat, 452 U.S. 458 (1981) 15

Cruzan v. Dir., Mo. Health Dept., 497 U.S. ___ (1990) 15

Detsel By Detsel v. Sullivan,
895 F.2d 58 (2d Cir. 1990) 13

Dole v. United Steelworkers of America,
494 U.S. 26 (1990) 18

Franklin v. Shields, 569 F.2d 784 (4th Cir. 1977) 13

Gozlon-Peretz v. United States, 498 U.S. ___ (1991) 17

Greater Orlando Aviation Authority v. F.A.A.,
939 F.2d 954 (11th Cir. 1991) 14

Harward v. Comm., 229 Va. 363 (1985) 17

Hayes v. Thompson, 726 F.2d 1015 (4th Cir. 1984) 13

Hewitt v. Helms, 459 U.S. 460 (1983) 15

Jones v. N. C. Prisoners' Union, 433 U.S. 119 (1977) 9

Lee v. Winston, 717 F.2d 888 (4th Cir. 1984), aff'd. 470 U.S. 753 (1985) 12

McGinnis v. Royster, 410 U.S. 263 (1973) 8

McNeil v. Dir., Patuxent Inst., 407 U.S. 245 (1972) 12

Miller v. Florida, 482 U.S. 423 (1987) 12

Pell v. Procunier, 417 U.S. 817 (1974) 11

Pennhurst State School & Hospital v. Halderman, 451 U.S. 1 (1981) 18

Peyton v. Williams, 206 Va. 595 (1965) 8

Philbrook v. Glodgett, 421 U.S. 707 (1975) 17

Pilot Life Ins. Co. v. Dedaux, 481 U.S. 41 (1987) 18

Pope v. Chew, 521 F.2d 400 (4th Cir. 1975) 17

Preiser v. Rodriquez, 411 U.S. 475 (1973) 12

Procunier v. Martinez, 416 U.S. 396 (1974) 11

Rivera-Cruz v. I.N.S., 948 F.2d 962 (5th Cir. 1992) 13

Rodriquez v. United States, 480 U.S. 522 (1987) 18

Russello v. United States, 464 U.S. 16 (1983) 18

Schwartz v. Muncy, 834 F.2d 396 (4th Cir. 1987) 13

S. E. C. v. Sloan, 436 U.S. 103 (1978) 9

S. I. A. v. Board of Governors, 468 U.S. 137 (1984) 19

Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983) 12

Transpacific v. Federal Maritime Com'n.,
951 F.2d 950 (9th Cir. 1991) 13

Weaver v. Graham, 450 U.S. 24 (1981) 12

Wolff v. McDonnell, 418 U.S. 539 (1974) 10

Zapata Haynie Corp. v. Barnard,
933 F.2d 256 (4th Cir. 1991) 13

Zelega v. I.N.S., 916 F.2d 1257 (7th Cir. 1990) 13

VIRGINIA CODES:

Section 53.1-5, Code of Virginia ..... passim

Section 53.1-159, Code of Virginia ..... passim

Section 53.1-191, Code of Virginia ..... passim

Section 53.1-199, Code of Virginia ..... passim

Section 53.1-201, Code of Virginia ..... passim

COURT RULES:

Rule 1:1, Rules of the Supreme Court of Virginia 6

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioners Dexter D. Coffin, III, Doe, and Joe respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in the above-entitled proceedings on December 16, 1992.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit has been ordered published and is reprinted in the appendix hereto, p. 1a, *infra*.

The Final Order of the United States District Court for the Western District of Virginia (Crigler, M.J.) has not been reported. It is reprinted in the appendix hereto, p. 15a, *infra*.

JURISDICTION

Invoking federal jurisdiction under both Title 28, United States Code, Section 2254 and 42 U.S.C. § 1983, the petitioners brought this suit in the Western District Court of Virginia and alleged violations, *inter alia*, of their Fourteenth Amendment rights to due process and equal protection of the laws. Joining the respondents, the petitioners consented to the jurisdiction of a United States Magistrate Judge. On May 5, 1992 The Western District Court denied the respondents' motion for summary judgment; granted, in part, the petitioner's motion for partial summary judgment; granted the writ as prayed for; and entered relief of a declaratory and injunctive nature against the respondents under the civil rights statute, but rejected the petitioners' claim for monetary damages.

All parties to the cause noted appeals of differing aspects of the Magistrate Judge's decision. On December 16, 1992 a panel of the Fourth Circuit entered a judgment and opinion reversing the Magistrate Judge's decision favoring the petitioners and dismissing the appeal the petitioners perfected. See p. 1a, *infra*. No petition for rehearing was sought.

The jurisdiction of this Court to review the judgment of the Fourth Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV, § 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

28 U.S.C. § 2254(a). **State custody; remedies in Federal courts**

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

42 U.S.C. § 1983. **Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Va. Code Ann. § 53.1-5. **Powers and duties of Board.**- The Board shall have the following powers and duties:

1. *****
2. *****
3. *****
4. To monitor the activities and goals of the Department and its effectiveness in implementing the standards and goals of the Board.
5. *****
6. To make, adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department; and
7. *****

Va. Code Ann. § 53.1-191 (1990). **Credits allowed in cases of injuries to or extraordinary services performed by prisoners; nonforfeiture of credits hereunder.**- The Board, with the consent of the Governor, may allow to any prisoner confined in a state correctional

facility a credit toward his term of confinement if he (i) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner; (ii) gives a blood donation to another prisoner; (iii) voluntarily or at the instance of a prison official renders other extraordinary services; or (iv) suffers bodily injury while in the prison system. The Board shall determine the amount of any such credit for each such service or injury. In unusual circumstances a prisoner may receive a credit for donating blood, under regulations prescribed by the Board, to blood banks licensed by or subject to regulation of the State Board of Health.

Except as provided hereinafter, any credit allowed under the provisions of this section shall be applied as provided in § 53.1-199 ... One-half of such credit shall be applied to reduce the period of time such prisoner shall serve before being eligible for parole.

Credits allowed under the provisions of this section may not be forfeited under § 53.1-189.

Va. Code Ann. § 53.1-199 (1990). **Eligibility for good conduct allowance; application.**- Every person who, ... , has been convicted of a felony ... may be entitled to good conduct allowance not to exceed the amount set forth in § 53.1-201. Such good conduct allowance shall be applied to reduce the person's maximum term of confinement while he is confined in any state correctional facility. One-half of the credit allowed under the provisions of § 53.1-201 shall be applied to reduce the period of time a person shall serve before being eligible for parole.

... Additional good conduct credits may be approved by the Board for such persons in accordance with § 53.1-191.

STATEMENT OF THE CASE

Most individuals serving felony sentences in the Commonwealth of Virginia are entitled to participate in the state's Good Conduct Allowance (GCA) program. Adopted by the Virginia General Assembly effective July 1, 1981, the GCA scheme offers an empirical schedule of incentives whereby, in return for increasingly positive conduct, prisoners may earn "good time" at rates ranging from no extra days' credit for each month confined to as much as 30 extra days' credit for every

30 days actually served. See § 53.1-201, Code of Virginia (1990).[2] Additionally, should a prisoner perform an extraordinary service he could be recommended to the Virginia Board of Corrections for an extraordinary credit which, if approved by the Board of Corrections and the Governor consents, would be granted. See § 53.1-191, Code of Virginia (1990); Appendix, at 29a. The Board of Corrections (the Board), it should be noted, is an agency which is statutorily independent of the DOC. Compare, § 53.1-2, et seq., Code of Virginia (1990), with § 53.1-8, et seq., Code of Virginia (1990). "Both extraordinary (§53.1-191) and GCA (§53.1-201) credits directly affect the DOC's computation of a prisoner's mandatory parole release date (MPRD)." Appendix, at 6a.

Inmates serving active prison sentences in Virginia may be released from confinement either by having been granted discretionary parole, see § 53.1-136, Code of Virginia (1990), or by completing service of their sentences and achieving statutory or, as it is most often called, mandatory parole release. Virginia Code Ann. § 53.1-159.

On July 16, 1990 each of the petitioners was awarded a 36 month extraordinary credit pursuant to § 53.1-191, Code of Virginia (1990), in recognition of meritorious service each provided to the Commonwealth of Virginia and to the State of Maryland. Appendix, at 3a. It is undisputed that, on July 16, 1990, each of the petitioners had also enjoyed long-term assignments to GCA Level I - the highest rate of earning good-time credit under Virginia law. Va. Code Ann. § 53.1-201(1).[3]Appendix, at 27a. At the time of the extraordinary awards petitioner Coffin had long since been released on supervised parole, inmate Doe had passed his parole eligibility date but remained confined, and inmate Joe had not then achieved either his parole eligibility or mandatory parole release date.

Incidental to oral argument- complete with illustrative aids, see Appendix 27a to 30a, on then outstanding dispositive motions filed with the trial court both by the petitioners and the respondents, see supra, at 2, the parties filed stipulated facts which are reprinted in the appendix hereto, at 18a, *infra*. These stipulated facts focus on the operation and application of the state statutes under which the various credits are as-

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[2] Prisoners serving sentences of a mandatory nature or of life imprisonment are ineligible for these credits as are those prisoners sentenced to death.

[3] The terms "good-time", "good-conduct", "gain time", and "GCA" shall be used interchangeably herein.

signed and applied, parole release, and, moreover, these stipulated facts comprise those facts controlling the case *sub judice*.

For example it was stipulated among the parties, and the court below noted, that whenever a prisoner's GCA level (or, sometimes called "class") is altered, the inmate retains those credits earned during the course of his assignment to the previous class. Appendix, at 21a, ¶ 31; and 7a, n.8. In relevant part, § 53.1-191, Code of Virginia (1990), specifically provides that credits awarded thereunder are to be applied in the same manner as are those earned under § 53.1-201. See e.g., Appendix at 6a, n. 6. The respondents, on the other hand, now contended that § 53.1-191 credits are to be applied toward the gross total sentence originally imposed upon the prisoner and the court below itself concurred adopting the respondents' view that the term "maximum term of confinement" contained in § 53.1-199 is synonymous with "original sentence". Appendix, at 10a.[4] But see Appendix, at 21a, #31

As a practical matter, when the respondents received notification from the Board and the Executive of the awards to the petitioners, revised PED and MPRD dates were calculated and identified. Appendix, at 3a. Because the petitioners were already assigned to GCA Level I, the awards were multiplied by a "projection factor" of .5 which resulted in their respective MPRD advancing by a total of only 18 months. See generally, Appendix at 8a. Thus, the crux of the petitioners' lawsuit was that the respondents' method of application in fact deprived each petitioner of one-half (.5) of the credit awarded by the Board and the Executive. The petitioners claimed that this methodology violated their due process and equal protection rights under the Fourteenth Amendment to the United States Constitution. In regard to the former the petitioners asserted that the application of the credits was effectuated without affording them an opportunity to be heard and that the respondents' method of application was contrary to legislative intent and the clear language employed in the relevant statute; contrary to the respondents' stated policy; and at odds with facts stipulated between the parties. With regard to the latter, the petitioners noted that the respondents' method of application respecting extraordinary credits effectively penalized them for being assigned to

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[4] Indeed the record reflects that the respondents and the court below most often referred to these credits as a "sentence reduction". But Rule 1:1, Rules of the Supreme Court of Virginia (1990), provides that the trial court loses jurisdiction to modify sentences 21 days after imposition. Cf., Appendix, at 13a, n.17.

GCA Level I. In support of this contention the petitioners demonstrated that if they were viewed next to an inmate whose behavior and adjustment were so poor that the individual had forfeited all of his accumulated good-time credit and was then assigned to GCA Level IV, the uncooperative inmate would benefit from the full 36 month credit as his award would not be multiplied by any projection factor. Va. Code Ann. §§ 53.1-159; 53.1-201(4). Put differently if two inmates, one in GCA Level IV and the other in GCA Level I and both with exactly five years remaining until their respective mandatory parole release dates, each received a three year § 53.1-191 credit the inmate in GCA Level IV would be released from custody 18 months sooner than would the inmate in GCA Level I whose adjustment and conduct, by statutory definition, had been deemed "exemplary". Virginia Code Ann. § 53.1-201(1); Compare, Appendix, at 12a, with Appendix, at 28a.

The petitioners also demonstrated that, because the respondents uniquely subtract § 53.1-191 credits from the original sentence imposed as opposed to subtraction from the then-identified MPRD as are § 53.1-201 credits, if an inmate were to receive two separate 1-year § 53.1-191 credits the individual would benefit from only the first of the two awards since application of the second § 53.1-191 credit would be merely repetitive of the first calculation and, consequently, of no effect on the inmate's MPRD. Appendix, at 30a.

As noted, supra, at 2 , on May 5, 1992 the trial court found in favor of the petitioners upon their claims presented pursuant to 28 U.S.C. § 2254 and ordered that a writ issue. The trial court also granted the petitioners both declaratory and injunctive relief pursuant to their claims brought under 42 U.S.C. § 1983, but declined to award monetary damages concluding instead that the respondents were entitled to qualified immunity.

The respondents noted their appeal of the trial court's judgment to which the petitioners cross-appealed relative to the qualified immunity question. Oral argument was held before the court below on October 2, 1992 and a final decision, subsequently amended as noted supra, at ii, was entered on December 16, 1992.

In explaining its decision, the Fourth Circuit stated

> [a]s a federal tribunal, we must be especially careful not to interfere unnecessarily with the administration of Virginia's prison system. If the DOC has rationally

> implemented the relevant statutes, the constitutionality of which is not questioned, we must defer to its interpretation. See *Peyton v. Williams*, 206 Va. 595, 145 S.E.2d 147, 151 (1965) ("The elementary rule of statutory interpretation is that the construction accorded a state statute by public officials charged with its administration and enforcement is entitled to be given great weight by the court[s]."); see also *McGinnis v. Royster*, 410 U.S. 263 (1973); *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) (state prison good conduct credit statute created rights that could not be arbitrarily abrogated, but those rights are strictly defined by the statute that provided for them). Appendix, at 10a.

Predicated upon this analysis, the court below concluded that

> the DOC is well within in its discretion as the implementing agency of Va. Code §§ 53.1-191, 53.1-199 in interpreting these provisions in the manner that it has. *Ibid.* (emphasis added)

The court below also noted the DOC's practical application:

> [f]or example, as a prisoner earns GCA credits, the DOC recalculates his MPRD by "subtracting" from the prisoner's initial MPRD the sum of credits already earned and the estimated number of credits the prisoner would earn were he to remain in the same GCA class for the duration of his confinement. Appendix, at 6a. (emphasis added)

The petitioners claim, *inter alia*, that the court below unnecessarily expanded the time-honored rule of deference to agency statutory interpretation; that the disparity in the respondents' method of applying §§ 53.1-191 and 53.1-201 credits is unsupported by law and inapposite with state statutory command; and, that their conduct was (a) unconstitutional under the framework of developed federal case law and the relevant statutes and, (b) contrary to the respondents' stated policy and Stipulated Fact Nos. 31 and 46. See, Appendix, at 21a-22a.

REASONS FOR GRANTING THE WRIT

Were the facts of this matter constrained to the simple question of how three former and present convicts should have applied extraordinary good-time awarded to them, the petitioners concede that seeking United States Supreme Court consideration would be inappropriate.

As will hereinafter be demonstrated, however, the legal principles applied by the court below to the facts of the case serve to expand a rule of law which expansion is contrary to precedent established by this Court and the majority of the Circuits. Unless reconsidered, this revised rule of law will have far-reaching negative repercussions in a myriad of matters.

I.

The Circuit Court Ignored Stipulated Facts, Made Incorrect Factual Findings And Then Applied An Incorrect Legal Analysis To Those Facts Which Are Material To A Just Resolution Of The Case.

In analyzing the facts of this case the court below stated that its focus was an inquiry into whether the DOC's implementation and administration of the statute in issue was "rational". Appendix, at 10a. Because the court answered those questions affirmatively, and since no challenge to the constitutionality of the statute was advanced, the court declared that the DOC was well within its province relative to the statutory interpretation it made. Inarguably that interpretation -authorized and constitutional or not- resulted in each petitioner forfeiting one-half (.5), or 18 months, of the 36 month credit awarded to him by the Board.

As a general principle courts are required to give deference to the interpretation of statutes made by implementing and administering agencies or entities. *Procunier v. Martinez*, 416 U.S. 396, 404 (1974); *Jones v. North Carolina Prisoners' Union*, 433 U.S. 119, 126 (1977). On the other hand, and presuming consistent and longstanding application exists, the deference accorded agency officials is neither blind nor reaches the level of autonomous authority precluding review by the courts. This Court has noted the added responsibility of determining whether the practice is *consistent with the agency's statutory authority. Securities*

& Exchange Comm. v. Sloan, 436 U.S. 103, 118 (1978). Here it is not given this agency's express and stipulated lack of statutory authority.

As noted, supra, at 5-6, incidental to consideration of their dispositive motions and at the direction of the trial court, the parties to the cause filed stipulated facts which have been reprinted in the Appendix commencing at 18a. It is those stipulated facts which control the law of the case.

In pertinent part, Stipulated Fact No. 46 states that:

> (n)either the VDOC nor its employees, has control over credits awarded to inmates by the Board of Corrections under Section 53.1-191 ... Appendix, at 22a. (emphasis added).

By statute the Virginia General Assembly has vested the Board of Corrections with the authority to promulgate rules and policies relative to the administration of the DOC, which includes the policy respecting § 53.1-191 - a statute, by the language employed, that already is solely within the Board's discretion. Va. Code Ann. §§ 53.1-5(6); 53.1-191. The respondents here are neither employees nor agents of the Board; consequently, their interpretation of the relevant statute is not entitled to deference as a matter of existing law. This is so simply because it is only the Board of Corrections which, by statute, is the implementing and administering agency. Compare, § 53.1-191 with Appendix, at 10a. Only the Board may therefore claim deference.

The second material fact upon which the court below erred related to having accorded deference at all. In matters concerning prison administration and management, it is settled law that deference is appropriate with respect to issues of institutional security, internal order, and discipline - none of which are present here.

Where important constitutional interests are in issue, the courts are under a mandate to identify the "procedures (which are) appropriate under the circumstances to insure that the state-created right is not arbitrarily abrogated." *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).[5] The "rational basis" test is generally only appropriate in cases where fundamental rights and suspect classifications are not in issue. *McGinnis*

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[5] Here the petitioners claim a federal constitutional liberty interest to the credits in issue only upon the award in light of the discretionary language employed by the Virginia General Assembly in § 53.1-191.

v. Royster, 410 U.S. 263 (1973). In *McGinnis*, a case upon which the court below relied in reversing the trial court, this Court was confronted with a state law which proscribed the award of good-time credits to confined pre-trial detainees which arose because the stated purpose of awarding good-time in New York is to acknowledge a prisoner's performance toward an individual goal of rehabilitation which is itself not an objective with those presumed innocent of crime and awaiting trial.

At heart in the policy of according deference to prison administrators the Court, in *Procunier v. Martinez*, 416 U.S. 396 (1974), noted that "[p]rison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating ... the inmates placed in their custody." Id., at 404. Ten Terms later in *Block v. Rutherford*, 468 U.S. 576, 591 (1984), the Court stated

> (w)e reaffirm that 'proper deference to the informed discretion of prison authorities demands that they, and not the courts, make the difficult judgments which reconcile conflicting claims affecting the *security* of the institution, the *welfare* of the prison staff, and the *property* rights of the detainees.' (emphasis added, citations omitted).

Consequently, "[p]rison administrators ... should be accorded wide-ranging deference in the adoption and execution of policy and practices that *in their judgment* are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish*, 441 U.S. 520, 547 (1979) (emphasis added).

But in further articulating the general policy of deference to the expertise of prison administrators the Court emphasized in *Pell v. Procunier*, 417 U.S. 817 (1974), that "(c)ourts cannot, of course, abdicate their constitutional responsibility to delineate and protect fundamental liberties." Id., at 827. At issue in *Pell* was consideration of a prison restriction relating to in-person prisoner-press interviews which created institutional security concerns. At issue in the case at bar is a substantial amount of good-time credit which itself has virtually no effect on institutional security, order or discipline. For this reason combined with the fact that the respondents have no statutory "judgment" to exercise under § 53.1-191, *Bell v. Wolfish*, supra, in every real sense of the terms,

once awarded, § 53.1-191 credits are non-discretionary, non-reducible, and non-forfeitable over which the respondents here long ago stipulated to having no control. Appendix, at 22a, #46.

In *Weaver v. Graham*, 450 U.S. 24 (1981), the Court reversed a Supreme Court of Florida decision holding that a revised "gain time" statute was applicable to one already serving his sentence and earning credits under the previous system. More recently the Court reversed another Supreme Court of Florida decision which applied a revised sentencing statute to one convicted of crimes prior to the statute's effective date. *Miller v. Florida*, 482 U.S. 423 (1987). In each of these cases the state agency's interpretation of the statute in question, although certainly not constitutional, was arguably "rational".

Indeed if the "rational basis" test were the correct inquiry for cases involving federal constitutionally-protected interests relating to the accumulation or forfeiture of good time, the incidents of federal court review and consideration of such cases would essentially be all but non-existent. This is so simply because experienced agency officials and creative counsel could almost always muster a "rational basis" defense.

Thus where, as here, the issues presented relate to the fact or duration of confinement resort to the federal courts, after the exhaustion of state remedies, has been held appropriate for a state prisoner under 28 U.S.C. § 2254. *Preiser v. Rodriquez*, 411 U.S. 475 (1973); *Wolff v. McDonnell*, supra, 418 U.S. at 554. And where damages are also sought, the presentation of a mixed § 1983/§ 2254 action is likewise appropriate. *Lee v. Winston*, 717 F.2d 888, affirmed, 470 U.S. 753 (1985). See also *Todd v. Baskerville*, 712 F.2d 70, 72 (4th Cir. 1983); *Preiser*, supra, 411 U.S. at 494; and, *Wolff*, supra, 418 U.S. at 554-55.

Traditionally, this Court has not hesitated to review the decisions of prison officials where important constitutional questions regarding good-time credits are at issue, see e.g., *Weaver v. Graham*, supra; *Wolff v. McDonnell*, supra; and, *Preiser v. Rodriquez*, supra, for it is axiomatic that those who have completed their sentences, whether by service, credits of time, or both, are entitled to be released from confinement. *McNeil v. Director, Patuxent Institution*, 407 U.S. 245 (1972). Depriving these petitioners of 18 months of their extraordinary good-time credit necessarily results in a contrived delay of their respective discharge from custody, thus implicating grave constitutional concerns both for these petitioners and for all those in custody who earn good-time credits against their sentences.

II.

The Fourth Circuit's Decision Here Does Conflict With The Established Precedent Of This Court And With Recent Judgments Of Other Circuits.

Interestingly the Fourth Circuit has itself recently recognized and discharged its responsibilities relative to considering an agency decision which implicated federally-protected interests without applying the "rational basis" test applied here. *Zapata Haynie Corp. v. Barnard*, 933 F.2d 256 (1991). The *Zapata* court specifically noted its responsibility to "review" decisions made by employees of state agencies which impact upon the protected federal rights of individuals. In fact *Zapata* follows a long line of Fourth Circuit cases premised upon incorrect statutory interpretation by a state agency that directly effects individual constitutional guarantees. Cf. *Schwartz v. Muncy*, 834 F.2d 396 (4th Cir. 1987) (ex post facto application of parole eligibility statute unconstitutional); *Franklin v. Shields*, 569 F.2d 784 (4th Cir. 1977), cert. denied, 435 U.S. 1003 (1978) (parole board required to furnish inmate written reasons for denial of discretionary release); and, *Hayes v. Thompson*, 726 F.2d 1015 (4th Cir. 1984) (reclassification of inmate to maximum security status by institutional classification committee may require procedural safeguards if state regulations create protected interests). The Fourth Circuit did not apply the "rational basis" test in analyzing any of these cases.

The majority of circuits lately have also concluded that the deference requirement does not prohibit them from reviewing cases involving state agency interpretation of statutes that implicate constitutional interests. Compare e.g., *Cajun Elec. Power Coop. v. F.E.R.C.*, 924 F.2d 1132 (D.C. Cir 1991) (remand appropriate where agency determination depends upon faulty claim); *Detsel By Detsel v. Sullivan*, 895 F.2d 58, 63 (2d Cir. 1990) (deference due agency only where it had 'articulated a logical basis for their decisions, including a rational connection between the facts found and the choices made.'"). (citations omitted); *Rivera-Cruz v. I.N.S.*, 948 F.2d 962 (5th Cir. 1992); *Zelega v. I.N.S.*, 916 F.2d 1257 (7th Cir. 1990) (review is *de novo* where Immigration Appeals Board has interpreted the Immigration Act); *City of St. Louis v. Dept. of Trans.*, 936 F.2d 1258 (8th Cir. 1991) (parties seeking review of agency decision required to show, *inter alia*, an injury from the decision); *Transpa-*

cific v. Federal Maritime Com'n., 951 F.2d 950 (9th Cir. 1991) (focus of inquiry is whether agency's interpretation based on a permissible construction of the statute); and, *Greater Orlando Aviation Authority v. F.A.A.*, 939 F.2d 954, 958 (11th Cir. 1991) (court required to "look at the record in its entirety, including the body of evidence opposed to the [agency's] view.").

The decision entered below also conflicts with this Court's recent precedent. In *Arkansas v. Oklahoma*, 503 U.S. __, 117 L Ed 2d 239 (1992), for example, the Court noted established law that "[a] court reviewing an agency's adjudicative action should accept the agency's factual findings if those findings are supported by substantial evidence on the record as a whole." 117 L Ed 2d at 259 (emphasis as in original). In the case at bar the trial court's judgment was reversed and the respondents' arguments accepted even though the respondents earlier stipulated that neither they nor the DOC had statutory authority relative to § 53.1-191 credits; the court below failed to point to the existence of any rule or regulation respecting application of § 53.1-191 credits, see § 53.1-5, Code of Virginia (1990); and, to accommodate reversal of the trial court's judgment, the court below stretched the policy of according deference to prison administrator's statutory interpretations beyond areas relating to institutional security and discipline.

It is apparent that the "rational basis" test employed by the court below in the context of this case is not only novel, but an application for which there exists no consistency or support either inside or outside the Fourth Circuit. The intermediate court's decision in the context of the facts presented in this case creates a conflict among the circuits by announcing the expansion of a time-honored federal policy relative to the review of prison official's interpretation of rules and law affecting institutional security and discipline.

III.

The Issues Presented Herein Are Sufficiently Important to Warrant This Court's Review.

Since time immemorial it has been unacceptable that agency decisions affecting important federal constitutional protections and rights of individuals may be considered and reviewed by the federal courts sitting in different jurisdictions under disparate rules and tests. Such circum-

stances can only lead to inconsistent results and, perhaps ultimately, to unnecessary confusion.

If, for example, the "rational basis" test were the law of the land, it is entirely possible that this Court would never have confronted the facts presented by such cases as *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Bell v. Wolfish*, 441 U.S. 520 (1979); *Hewitt v. Helms*, 459 U.S. 460 (1983); or, *Cruzan v. Director, Missouri Health Dept.*, 497 U.S. ___, 111 L Ed 2d 224 (1990), to identify but a few.

In *Roth* the Court had occasion to address the question of whether a non-tenured college professor had a "claim of entitlement" to renewal of his teaching contract. Both *Bell* and *Hewitt* resolved important questions incidental to the confinement of individuals. In the former case the Court addressed issues presented concerning the punishment of pre-trial detainees, while in *Hewitt* the central question presented was whether, in light of explicitly mandatory language incorporated in the state statute there under review, Pennsylvania prisoners enjoyed a constitutionally protected interest in remaining free of in-prison detention or segregation. Contrasting *Hewitt*, in *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458 (1981), the Court concluded that state prisoners did not have a protected interest in the commutation of their sentences owing to the absence of mandatory language in that statute.

And in *Cruzan* the focus was, *inter alia*, the petitioner's right to die which was frustrated by the language employed in Mo Rev Stat § 459.010, et seq. Though the patient may indeed have previously expressed a desire that extraordinary life-saving measures not be employed when it appeared likely that her recovery was doubtful, the Court affirmed a Supreme Court of Missouri decision declining to permit the termination of Ms. Cruzan's medical and nutritional treatment. It is certainly beyond peradventure that the argument on both sides of the controversy had merit. If, however, the courts were precluded from considering the case because of the "rational basis" test, unresolved questions might continue to linger that could have a deleterious affect on society.

Central to the correct factual disposition of this case it is important to note that the Fourth Circuit failed to apply key stipulated facts. When, for example, a prisoner's GCA class is accelerated, the parties agreed before the trial court that the prisoner retains the credits he earned in the prior class assignment and the new credit rate earned by way of the acceleration "commence(s) on the date the increase in GCA is made effective." Appendix, at 21a, #31. This is a crucial fact to remember for

it is established statutory law that § 53.1-191 credits are to be applied as are their § 53.1-201 counterpart. Appendix, at 5a. And, of course, it has become the settled law of the case that GCA credits are "subtract(ed)" from the MPRD. Appendix 6a. It is the so-called "projection factor" noted by the court below, see Appendix, at 8a, which, without identification of the correct and most recent MPRD, causes such confusion in the case.

By way of illustration there is yet another point on which the intermediate court erred further serving to confirm a continued misunderstanding of Virginia's statutory scheme and a general disregard of stipulated facts. In its opinion, at 11a, the court stated that § 53.1-159 authorizes that the "the Board of Corrections may delay up to six months the release of any prisoner if it has `reasonable cause' to believe that, if released, he will pose a danger to another individual. See supra note 7."

In point of fact it is the Virginia *Parole Board* which has the authority to delay the release of an inmate under such circumstances. Indeed § 53.1-134, et seq., Code of Virginia (1990), statutorily creates the Parole Board and vests in that body such responsibilities as granting inmates their discharge on discretionary parole (§53.1-136(2)), revoking inmates' discretionary or mandatory parole (§53.1-165), and as noted, deferring an individual's mandatory parole release for a period of up to six months (§53.1-159). These functions fall strictly within the purview of the Virginia Parole Board which, in every true sense of the word, acts autonomously both of the DOC and of the Board of Corrections. See also Appendix, at 19a, Nos. 13-19.

IV.

The Court Below Erred In Concluding That The DOC's Application Of The Credits In Issue Is Consistent With The Legislative Intent.

Although a great many similarities exist, § 53.1-191 credits have a character uniquely different from those granted state prisoners and assigned under § 53.1-201. The parties long ago stipulated that, unlike § 53.1-201 credits, awarded § 53.1-191 credits are not subject to forfeiture in the event the inmate escapes custody or otherwise violates a

prison rule or regulation. Appendix, at 21a, #42-43. By contrast, § 53.1-191 credits may be recommended by prison administrators, but in fact "[n]either the VDOC nor its employees has control over credits awarded to inmates by the Board of Corrections under Section 53.1-191, Code of Virginia, except with regard to making ... the mathematical application of such a credit against an inmate's term of confinement." Appendix, at 22a, #46. Section 53.1-191 credits require the approval of no less an authority that the state's Chief Executive.[6]

Some other established principles relative both to statutory construction and deference are timely noted here. In Virginia, penal statutes are to be *strictly* construed against the Commonwealth and in favor of a citizen's liberty. They cannot be extended by implication. *Harward v. Commonwealth*, 229 Va. 363 (1985). In determining the meaning of a statute the courts look not only to the particular statutory language, but also to the design of a statute as whole and its object and policy. *Philbrook v. Glodgett*, 421 U.S. 707 (1975); *Gozlon-Peretz v. United States*, 498 U.S. __, 112 L Ed 2d 919 (1991). It is clear that in promulgating § 53.1-191, the Virginia General Assembly intended to compensate the extraordinary services performed by prisoners with credits of time that, once assigned, could not be forfeited in response to negative conduct. Those credits of time, like those earned under § 53.1-201, are designed to reduce the period of time that an individual is confined. Appendix, at 6a. It is equally patent that the Virginia General Assembly vested the full discretion and control of § 53.1-191 in the Board of Corrections and granted neither to the Department of Corrections. In other words, contrary to the conclusion of the Fourth Circuit, the DOC is *not* the implementing agency. Appendix, at 10a.

With respect to application, § 53.1-199 delineates the methodology of applying credits to prisoner's terms of confinement. The statute instructs that any credit is to be deducted from the person's "maximum term of confinement" and one-half (.5) of the credit is to be used to reduce that period before the person is eligible for discretionary parole release consideration. In terms of practice the respondents stipulated below that, as credits are applied, prior credits are retained. Appendix, at 21a, #31.

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[6] In this sense § 53.1-191 credits are more akin to Executive Clemency or a pardon. See, e.g., *Pope v. Chew*, 521 F.2d 400 (4th Cir. 1975). It is settled law that such acts are protected.

See also, Appendix, at 7a n. 8. In its opinion the court below noted that "as a prisoner earns GCA credits, the DOC recalculates his MPRD by `subtracting' from the prisoner's initial MPRD the sum" of credits granted. Appendix, at 6a. (emphasis added).

It is undisputed that the respondents construe the words "maximum term of confinement" contained in § 53.1-199 to mean "the prisoner's original sentence". Appendix, at 7a. And, of course, it is inarguable that § 53.1-191 uses the words "term of confinement", specifically omitting the word "maximum". No great leap is required to realize that the Virginia General Assembly expected inmates to earn GCA credits before being awarded a § 53.1-191 credit, if ever they are. It would have been decisive and conclusive de minimus to repeat the word "maximum" in the language of § 53.1-191 if the Virginia General Assembly intended that computations would be made as outlined by the court below. Appendix, at 7a-9a. Because the state legislature would have no way of predicting where inmates would stand in terms of GCA credits at the time of any § 53.1-191 awards, the use of the word "maximum" in § 53.1-191 would support and necessitate the computational methodology espoused by the respondents and the court below. Instead, the Virginia General Assembly omitted the word "maximum" thereby devising a methodology whereby the initial GCA classification resulted in the computation of an original MPRD against, or subtracted from, the prisoner's original sentence, while the "end date" used in every subsequent transaction would be the previously-identified MPRD.

It is a settled rule of statutory construction that where a word is used in one portion of the statute but not another, the legislature is presumed to have acted intentionally in the disparate inclusion or exclusion. *Russello v. United States*, 464 U.S. 16 (1983); and, *Rodriguez v. United States*, 480 U.S. 522 (1987). Although these statutes are not one in the same, clearly §§ 53.1-159, 191, 199, and 201 must all be read together to fully understand Virginia's unique "good-time" scheme.

As this Court has clearly stated, when expounding a statute the Court must not be guided by a single sentence or member of a sentence, but must look to the provisions of the whole law, and to its object and policy. *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987); and, *Dole v. United Steelworkers of America*, 494 U.S. 26, 108 L Ed 2d 23 (1990). It is elementary that, had the Virginia General Assembly wanted credits earned or awarded reduced by "projection factors", it would have said so. In

the absence of language to the contrary, common sense and constitutional edict dictate that any credits awarded to a prisoner must be subtracted from the MPRD ascribed on the date of the transaction. Compare e.g., Appendix, at 27a. It is likewise settled law that "judicial deference to an agency's interpretation of a statute `only sets the framework for judicial analysis; it does not displace it.'" *Securities Industry Assoc. v. Board of Governors*, 468 U.S. 137, 143 (1984) (citations omitted). The court below is required to "reject administrative constructions ... that are inconsistent with the statutory mandate or that frustrate ... the policy" which the General Assembly "sought to implement.'" *Ibid.* (citations omitted). The Fourth Circuit instead adopted such a construction.

This case offers another reason to discount the deference accorded the respondents: as often noted hereinabove the parties stipulated, *inter alia*, that as inmates progressed up the GCA ladder, credits previously assigned are retained and new credits commence on the date the new level of assignment becomes effective. Appendix, at 21a, #31. Now, however, the respondents select to ignore this stipulated fact and argue that all time-credit transactions must be deducted from the "maximum term of confinement" or, as the court below noted the respondents' definition, the "original sentence" imposed.

Where, as here, the agency shifts its position from that initially adopted, "its interpretation is entitled to *less* weight." *Securities Industry Assoc.*, supra, 468 U.S. at 144 (emphasis added).

SUMMARY

The Fourth Circuit's "rational basis" rule expands upon a nationwide judicial policy of according deference to agency statutory interpretations. This expansion instructs the trial courts not to entertain cases involving challenges to agency statutory interpretative decisions unless the decisions are without a "rational basis" or the constitutionality of the statute is itself challenged. It is patent that the revised policy is not constrained to the Virginia Department of Corrections.

Rather, if this expanded circuit policy stands it will be applied to decisions of all state and other agencies within the Fourth Circuit jurisdictions. There are over 22,877,643 citizens residing in the Fourth Circuit states.[7] The Fourth Circuit's deference policy, significantly different from that applied in other circuits, see, supra, 13-14, will create confusion and lead to additional litigation. This Court should grant certiorari to resolve the important questions presented herein.

[7] Source: 1990 Census. Does not include servicemen and women overseas.

CONCLUSION

This case compels the attention of the highest Court in our country. The decision of the court below, without basis in law or consistency with other authority, creates a dangerous precedent which only the Supreme Court of the United States can correct.

For the foregoing reasons and, predicated upon the authority cited, the petitioners respectfully pray that the Court will enter an Order agreeing to review this matter and scheduling full briefing.

Respectfully Submitted,

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March 9, 1993

APPENDIX

PUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

DEXTER DRAKE COFFIN, III; DOE; JOE,*
Petitioners-Appellees,

v.

EDWARD W. MURRAY; Director,
Virginia Department of Corrections;
E. C. MORRIS, Deputy Director,
Virginia Department of Corrections;

No. 92-6630

LOU ANN WHITE, Manager,
Classification and Records Unit,
Court and Legal Services, Virginia
Department of Corrections;
UNKNOWN ADMINISTRATIVE
PERSONNEL, Virginia Department of
Corrections,
Respondents-Appellants.

* After decision of these appeals but before final publication of the Court's opinion, two of the appellees moved the Court that they be referred to in the opinion by the pseudonyms "Doe" and "Joe." The Court granted the motion by order filed January 19, 1993.

DEXTER DRAKE COFFIN, III; DOE; JOE,*
Petitioners-Appellees,

v.

EDWARD W. MURRAY; Director,
Virginia Department of Corrections;
E. C. MORRIS, Deputy Director,
Virginia Department of Corrections;

No. 92-6631

LOU ANN WHITE, Manager,
Classification and Records Unit,
Court and Legal Services, Virginia
Department of Corrections;
UNKNOWN ADMINISTRATIVE
PERSONNEL, Virginia Department of
Corrections,
Respondents-Appellants.

Appeals from the United States District Court
for the Western District of Virginia, at Harrisonburg.
B. Waugh Crigler, Magistrate Judge.
(CA-91-44-H)

Argued: October 2, 1992

Decided: December 16, 1992

Amended by order filed January 22, 1993

Before WILKINSON, NIEMEYER, and LUTTIG, Circuit Judges

No. 92-6630 reversed and No. 92-6631 dismissed by published opinion. Judge Luttig wrote the opinion, in which Judge Wilkinson and Judge Niemeyer joined.

COUNSEL

ARGUED: Reneen Evat Hewlett, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for Appellants. Dexter Drake Coffin, III, Charlottesville, Virginia, Appellee Pro Se; Steven David Rosenfield, Charlottesville, Virginia, for Appellees. **ON BRIEF**: Mary Sue Terry, Attorney General of Virginia, William R. Coleman, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for Appellants.

OPINION

LUTTIG, Circuit Judge:

The Director and other officials of the Virginia Department of Corrections appeal from the judgment of the United States District Court for the Western District of Virginia granting writs of habeas corpus and declaratory and injunctive relief to appellees Dexter D. Coffin, III, Doe, and Joe, inmates confined within the Virginia Department of Corrections system. The district court held that appellees' Fourteenth Amendment rights were abridged by appellants' misinterpretation of a Virginia prison statute governing the application of extraordinary credits. We conclude that appellants properly interpreted and applied the Virginia statute and that appellees thus were not deprived of any liberty interests protected by the Fourteenth Amendment. We therefore reverse.

I.

The relevant facts are undisputed. From 1987 through mid-1988 appellees Coffin, Doe, and Joe were confined at the Augusta Correctional Center. During that time, they cooperated with Virginia and Maryland law enforcement authorities. In return for their cooperation, the Virginia Board of Corrections, with the consent of the Governor, awarded each of the appellees a 36-month extraordinary credit pursuant to section 53.1-191 of the Virginia Code. The credits were awarded on July 16, 1990. App. at 217-19. At that time, Coffin was on parole, having been released on August 4, 1989. See infra note 12. Doe and Joe, however, were still in prison, where they remain today. The Department of Corrections [the DOC] thereafter applied the extraordinary credits to

appellees' terms of confinement in accordance with its standard procedures for implementing section 53.1-191. See discussion infra Part II.B; see also Appellants' Br. at 5.

Appellees unsuccessfully sought administrative and state habeas corpus relief on a claim that they effectively had received only half of the value of the credits,[1] after which they filed this action in federal district court against appellants Edward W. Murray, E.C. Morris, and Lou Ann White[2] under 28 U.S.C. § 2254 and 42 U.S.C. § 1983. They alleged inter alia that the Board of Corrections' award of extraordinary credits created a liberty interest cognizable under the Fourteenth Amendment, which had been abridged by the DOC's unlawful interpretation and implementation of section 53.1-191. Both parties filed motions for summary judgment. App. at 73, 118.

Following a hearing on these motions, a federal magistrate judge sitting by agreement of the parties pursuant to 28 U.S.C. § 636(b)(1)(A) granted summary judgment in appellees' favor. The magistrate judge held that appellees were entitled to writs of habeas corpus and declaratory and injunctive relief under section 1983 and ordered the DOC to recalculate the terms of confinement under the interpretation of section 53.1-191 advanced by appellees. App. at 55-71.[3] The DOC officials appealed directly to this court on the authority of 28 U.S.C. § 636(c)(3).[4]

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[1] Appellees' habeas petitions were summarily denied by the Virginia Supreme Court.

[2] Murray and Morris are, respectively, the Director and Deputy Director of the DOC. White is the DOC's Classification and Records Unit Manager.

[3] The magistrate judge denied appellees' claim for monetary damages, holding that appellants were entitled to qualified immunity. Id., at 64-67.

[4] No. 92-6630. Appellees cross-appealed in No. 92-6631 on the question of whether the magistrate judge erred in refusing to grant monetary damages. See supra note 3. Because of our disposition of No. 92-6630, we dismiss the cross-appeal.

II.

A.

Prisoners within the Virginia Department of Corrections system may earn, through good behavior, two types of credits against their maximum terms of confinement - extraordinary credits and good conduct allowance (GCA) credits. The award of extraordinary credits is authorized by section 53.1-191, which states in relevant part that

> [t]he Board [of Corrections], with the consent of the Governor, may allow to any prisoner confined in a state correctional facility a credit toward his term of confinement if he ... voluntarily or at the instance of a prison official renders ... extraordinary services ...
>
> Expect as provided hereafter, any credit allowed under the provisions of this section shall be applied as provided in § 53.1-199 ...

Va. Code § 53.1-191 (emphasis added). By the terms of section 53.1-191, therefore, extraordinary credits are to be applied in the same manner as are GCA credits under section 53.1-199. Under section 53.1-199, GCA credits, which may "not ... exceed the amount set forth in § 53.1-201,"[5] are to be applied "to reduce the person's maximum term of confinement while he is confined in any state correctional facility. Va.

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[5] Section 53.1-201 establishes a classification system, which in turn defines the number of GCA credits that a particular prisoner may earn. Based on their behavior, prisoners are assigned to one of four GCA classes. For every thirty days an inmate serves, he receives credit for serving some multiple of thirty days, depending upon his classification. Thus, prisoners in the highest class, GCA Class I, earn thirty additional days of good conduct credit for every thirty days actually served in prison -- a multiple of two. Prisoners in GCA Class II earn twenty days, and those in GCA Class III earn ten days, of credit for every thirty days served. Prisoners in the lowest class, GCA Class IV, earn no extra credit for time served. At any time, prisoners may be promoted or demoted in GCA class depending on their behavior and other related factors.

Code § 53.1-199 (emphasis added).[6]

Both extraordinary and GCA credits directly affect the DOC's computation of a prisoner's mandatory parole release date (MPRD). The MPRD "is the date upon which an inmate must be released to the supervision of the Division of Community Corrections [i.e., parole board]." App. at 182, ¶ 16 (stipulation of parties). Each prisoner's MPRD is initially set six months prior to the end of his sentence pursuant to section 53.1-159 of the Virginia Code, which requires that all prisoners serve a minimum of six months of mandatory parole before final discharge, unless they represent a danger to the community.[7]

GCA and extraordinary credits advance a prisoner's MPRD by shortening the amount of time he must serve before being released on mandatory parole. For example, as a prisoner earns GCA credits, the DOC recalculates his MPRD by "subtracting" from the prisoner's initial MPRD the sum of the credits already earned and the estimated number of credits the prisoner would earn were he to remain in the same GCA

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[5] *(continued)*
It is undisputed that at the time they were awarded their extraordinary credits, all three appellees were in GCA Class I.

[6] Although by operation of section 53.1-191 extraordinary credits are applied in the same manner as are GCA credits, there is a critical respect in which the two forms of credits are different. Extraordinary credits are not subject to forfeiture, but a prisoner may forfeit his GCA credits by violating prison rules and regulations, and shall forfeit all GCA credits if convicted of escape and attempted escape. Va. Code §§ 53.1-189 A., B., 53.1-191.

[7] If within thirty days of a prisoner's scheduled release on mandatory parole new information is provided to the Board of Corrections "which gives the Board reasonable cause to believe that the release poses a clear and present danger to the life or physical safety of any person, the Board may delay the release for up to six months ..." Va. Code § 53.1-159. It is therefore possible for a prisoner to serve his entire sentence in prison. See App. at 45.

class for the duration of his confinement. Because a prisoner can earn or lose GCA credits, or change GCA class,[8] day-to-day, see supra notes 5-6, and may also earn non-forfeitable extraordinary credits, his MPRD can change from one day to the next, and it is never permanently fixed until the day is reached.[9] As appellants note, the MPRD is "merely a projection." Appellants' Reply Br. at 10.[10]

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[8] If a prisoner receives a higher GCA classification, he retains the credits he earned while in the lower class but thereafter earns credits at the rate specified in his new class. App. at 184, ¶ 31; see also Appellees' Br. at 15. The retained credits are still subject to forfeiture.

[9] Each time an event occurs that alters a prisoner's MPRD, such as a change in GCA class or the forfeiture of GCA credits because of a prison rule violation, the DOC provides the prisoner with a computerized "Legal Update" apprising him of the change, and from which he may calculate the final day of his sentence. The Legal Updates recite inter alia the prisoner's total sentence and the starting date of that sentence. See App. at 196-97. The appellees' suggestion, see Appellees' Reply Br. at 19, that the MPRD is "the only date of substance" found on an Update is, therefore, incorrect.

[10] Appellees vigorously dispute the characterization of MPRDs as "projections." They contend that the word "projected" nowhere appears on the Legal Updates. At least some of the Legal Updates, however, specifically recite that the information they provide is "projected and ... subject to change." See, e.g., App. at 196 (Legal Update for appellee Doe) (emphasis added). Because prisoners know that they can earn proportionately more GCA credits through promotion into a higher GCA class and lose credits through forfeiture, two occurrence which will cause a recalculation of the MPRD, however, there can be little question that prisoners understand that at any given moment their MPRD is only a projection. See e.g., Appellees' Br. at 15 & n.9; Appellees' Reply Br. at 17.

B.

The DOC's standard procedure for implementing sections 53.1-191 and 53.1-199, which was followed when applying the extraordinary credits earned by appellees, is as follows. Because the DOC defines the "maximum term of confinement" as being the prisoner's original sentence, see App. at 78; Appellants' Reply Br. at 12, the DOC first determines the number of days remaining on the extraordinary credit recipient's original sentence as of the date the credit was received. From this total the DOC subtracts 182 days, which represents the six-month mandatory parole period required by section 53.1-159. App. at 84, 97.[11] Once it has determined the number of days that remain to be served by the prisoner before he must be released on parole, the DOC subtracts from that figure the number of days of extraordinary credit that have been awarded. Id. The remainder is the number of days the prisoner would have to serve before being released under the terms of section 53.1-159, in the absence of GCA credits already earned or projected to be earned based upon the prisoner's GCA class.

From this figure, the DOC subtracts any GCA credits already earned. It then multiplies the balance by a "projection factor," which is the reciprocal of the multiple applicable to the particular prisoner's GCA class. See generally supra note 5. The resulting product is the number of days the prisoner has to serve before he must be released on parole, provided that he both remains in his current GCA class and does not forfeit any of the GCA credits he has earned or is projected to earn. Finally, the DOC "adds" this number of days to the date the extraor-

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[11] By subtracting the 182 days representing a prisoner's anticipated mandatory parole, the DOC appears almost to concede that a prisoner's maximum term of confinement is the length of his sentence, less 182 days. We question whether the DOC is required to deduct the 182-day mandatory parole time, given that it too, like GCA credits, is subject to forfeiture, see supra note 7.

dinary credit is received, with the resulting date being the prisoner's new MPRD.[12]

The DOC's application of appellee Doe's extraordinary credit is illustrative of the Department's procedure. On July 16, 1990, Doe had 4,496 days remaining to serve on his original sentence. The DOC subtracted 182 days, reflecting the mandatory six-month parole period required by section 53.1-159. From the remainder of 4,314 days, the DOC subtracted 1096 days (36 months), the amount of the extraordinary credit earned by DOE. This left Doe with 3,218 days to serve until he would be eligible for mandatory parole, in the absence of any GCA credits. The DOC then multiplied this figure by the projection factor for Doe's GCA class, Class I, which is 0.5 (the reciprocal of the multiple for GCA class I, which is two) and arrived at 1,609 days. By serving this number of days he would also earn 1,609 days of GCA credit and would thereby reach his MPRD, provided that he remains in GCA Class I and does not forfeit any GCA credits. App. at 84.

III.

Having outlined the statutory framework and the DOC procedure at issue, we turn to the contentions of the parties. Appellants' principal argument is that the DOC's application of their 36-month extraordinary credits deprived them of half of the value of those credits because, even though it reduced their sentences by the full 36 months, it advanced their MPRD

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[12] The DOC undertook a similar procedure in appellee Coffin's case, although his circumstance was different from that of Doe and Joe in that he was already on parole when he received the extraordinary credit. Instead of advancing Coffin's MPRD, the DOC applied the credit to advance his parole expiration date. See App. at 76-77. We question, as appellants now apparently do, see Appellants' Reply Br. at 14, whether Coffin was statutorily eligible for any kind of reduction, given that he was on parole at the time that the credits were applied. Section 53.1-199 specifically states that credits are to be applied to reduce a person's maximum term of confinement "while he is confined in any state correctional facility." We do not address this issue, however, because it was not properly raised, if at all.

by only 18 months. Appellees' Br. at 13. Appellants do not deny the latter assertion; they claim simply that their procedure for applying credits comports with the plain terms of the relevant statute. The resolution of this dispute thus turns on the meaning of the phrase "maximum term of confinement" in section 53.1-199, because it is the maximum term of confinement that the DOC is instructed to reduce through its application of extraordinary credits. See Va. Code §§ 43.1-191, 53.1-199. The DOC interprets the phrase to mean the prisoner's original sentence, while the appellees assert, and the magistrate judge agreed, that the phrase refers to the prisoner's MPRD. See App. at 60-62.

As a federal tribunal, we must be especially careful not to interfere unnecessarily with the administration of Virginia's prison system. If the DOC has rationally implemented the relevant statutes, the constitutionality of which is not questioned, we must defer to its interpretation. See Peyton v. Williams, 206 Va. 595, 145 S.E.2d 147, 151 (1956) ("The elementary rule of statutory interpretation is that the construction accorded a statute by public officials charged with its administration and enforcement is entitled to be given great weight by the court[s]."); see also McGinnis v. Royster, 410 U.S. 263 (1973); Wolff v.McDonnell, 418 U.S. 539, 557 (1974) (state prison good conduct credit statute created rights that could not be arbitrarily abrogated, but those rights are strictly defined by the statute that provided for them).

We conclude that the DOC is well within its discretion as the implementing agency of Va. Code §§ 53.1-191, 53.1-199 in interpreting these provisions in the manner that it has. See Peyton, supra.

As the appellants observe, "[t]he maximum term of confinement can only be the maximum amount of time that an inmate may remain imprisoned upon his sentence." Appellants' Reply Br. at 12. While few Virginia state prisoners serve their entire sentence in prison because of the six-month mandatory parole provision found in section 53.1-159, a prisoner can be confined for the duration of his sentence under certain circumstances. See e.g., Va. Code § 53.1-159; supra note 7. Because confinement for

the duration of a sentence, but not beyond this term, is possible, a prisoner's sentence necessarily represents his maximum term of confinement.[13]

The amount of time until a prisoner reaches his MPRD cannot represent the maximum term of confinement because the maximum term of confinement, by definition, must be a period certain. The MPRD, as noted supra note 10 and accompanying text, is, until the day it is reached, merely a projection based upon the assumption that the prisoner will remain in the same GCA class, that he will not lose any earned GCA credits and that he will not acquire any additional extraordinary credits. Indeed, as appellees themselves stipulated, App. at 182, ¶ 18, even if these assumptions hold true, the prisoner may never be released on mandatory parole under Va. Code ¶ 53.1-159, because that section provides that the Board of Corrections may delay up to six months the release of any prisoner if it has "reasonable cause" to believe that, if released, he will pose a danger to another individual. See supra note 7. And even if he is released on his MPRD, he may be reconfined for violation of the terms of his parole. See Va. Code § 53.1-165 ("The Board, in its discretion, may revoke the parole and order the reincarceration of the prisoner for the unserved portion of the term of imprisonment originally imposed upon him ..."); Va. Code § 53.1-159 ("no person released on parole pursuant to this section, whose parole is subsequently revoked, shall thereafter be released on parole pursuant to this section.") (emphasis added).[14]

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[13] Appellees obviously recognize the tension, if not the conflict, between their interpretation and the language of section 53.199. Throughout their submissions, they quote the statute as requiring the DOC to reduce a prisoner's "term of confinement," rather than his "maximum term of confinement." See e.g., Appellees' Br. at 14, 16; Appellees' Reply Br. at 15, 18.

[14] If appellees' interpretation was correct, Virginia prisoners would effectively receive twice the amount of every extraordinary credit. Since every day a GCA Class I prisoner serves in confinement advances his MPRD one day but satisfies two days of his sentence, advancing that prisoner's MPRD by the full amount of an extraordinary credit would effectively reduce his sentence by twice the amount of the credit awarded.

As appellants observe, "[t]he maximum term of confinement can only be the maximum amount of time that an inmate may remain imprisoned upon his sentence." Appellants' Reply Br. at 12. While few Virginia state prisoners serve their entire sentence in prison because of the six-month mandatory parole provision found in section 53.1-159, a prisoner can be confined for the duration of the term of his sentence under certain circumstances. See e.g., Va. Code § 53.1-159; supra note 7. Because confinement for the duration of a sentence, but not beyond his term, is possible, a prisoner's sentence necessarily represents his maximum term of confinement.

Appellees argue that the correctness of their interpretation of the phrase "maximum term of confinement" is confirmed by the fact that appellants apply GCA credits and extraordinary credits differently -- the former against the prisoner's MPRD and the latter against his original sentence -- despite the requirement under section 53.1-191 and 53.1-199 that they intended to be applied identically. The implicit premise of this argument appears to be that GCA credits are applied properly and therefore that extraordinary credits are necessarily applied improperly. We are satisfied, however, that the DOC applies the two types of credit in the same way, as required by the statute. It bases all MPRD calculations initially on a prisoner's original sentence, less the mandatory parole period, see supra note 11. Any time a new MPRD is calculated, whether because of an extraordinary credit award or GCA change, the original sentence serves as the base period against which all extraordinary and GCA credits are applied. The only difference in treatment of the two types of credits is that GCA credits are projected, whereas extraordinary credits are not. This difference in treatment, however, is attributable to the different statutory characteristics of the two types of credits; namely, extraordinary credits are irrevocable, but GCA credits are not. See Va. Code § 53.1-189; supra note 6.

Indeed, that appellees MPRDs were advanced by only 18 months rather than by 36 months, the amount of their extraordinary credits, is the natural product of the interplay of these two separate programs, one whose credits are certain and one whose credits can only be projected. The appellees were in GCA Class I on July 16, 1990, and therefore were projected to serve in confinement only one-half of the time remaining

on their sentences less their mandatory parole reductions,[15] and so to satisfy the balance of their sentences with the GCA credits they were projected to earn during their confinement.[16] This is, they were projected to earn two months toward completion of their sentences for every one month served in confinement. Because the period between the date an extraordinary credit is awarded and the MPRD is the amount of time that a prisoner must serve in confinement to satisfy his sentence, and because appellees were satisfying two months of their sentences every month they were confined, their MPRDs were advanced as a result of the extraordinary credits by half the amount of the 36-month sentence reductions, or 18 months.[17]

It may be the case, as appellees assert, that the tangible benefit, i.e., freedom from confinement, that a prisoner receives from an extraordinary credit is inversely related to the prisoner's GCA class. For example, were the appellees to forfeit all of the GCA credit for time served in confinement, they would indeed be released 36 months rather than 18 months early as a result of the extraordinary credits they were awarded on July 16, 1990. This does not mean, however, that the appellants are misapplying section 53.1-199. If anything, it merely reveals that the incentives

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[15] Appellee Coffin was treated by the appellants as being in confinement for purposes of applying his extraordinary credit because he was on supervised parole; he was not, of course, confined in a state correctional facility on July 16, 1990. See supra note 12.

[16] or this reason, each appellee's MPRD was the date approximately halfway through the period of time remaining on his sentence.

[17] This effect of a 36-month sentence reduction on Class I prisoner MPRDs is illustrated by the following example. A prisoner in GCA class I with 10 years remaining on his sentence would have to serve only 5 years in confinement to satisfy that sentence; in other words, his MPRD would be reached in only 5 years, barring any changes in his credits. If that prisoner receives a 36 month extraordinary credit, the DOC reduces his sentence by 36 months, to seven years. In GCA Class I, the prisoner will satisfy that sentence in 3 1/2 years and therefore his MPRD will be in 3 1/2 years. The MPRD will have advanced 18 months because of the 36-month extraordinary credit.

to conduct oneself in such a manner as to earn extraordinary credits are not uniform across the four GCA classes, a disparity that must be addressed, if at all, by the Virginia General Assembly.

IV.

Appellants did not violate the requirement of Va. Code §§ 53.1-191, 53.1-199 that extraordinary credits be applied to reduce a prisoner's "Maximum term of confinement" when they applied the credits so as to reduce appellees' sentences, rather than their MPRDs. Therefore, appellees were not deprived of their liberty in violation of the Fourteenth Amendment. The decision of the magistrate judge is reversed to the extent that it afforded appellees relief under 28 U.S.C. § 2254 and 42 U.S.C. § 1983, and the appellees cross-appeal is dismissed.

No. 92-6630 – REVERSED
No. 92-6631 – DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

DEXTER D. COFFIN, III, THOMAS K. DOYLE AND THOMAS L. JONES,	)	CIVIL ACTION NO. 91-0044-H
Plaintiffs (Petitioners)	)	**FINAL ORDER**
V.	)	
EDWARD W. MURRAY, ET AL.,	)	By: B. WAUGH CRIGLER
	)	U.S. MAGISTRATE JUDGE
Defendants (Respondents)	)	

For the reasons set forth from the bench on May 1, 1992, it is

O R D E R E D

as follows:

1) CLAIMS UNDER 28 U.S.C. § 2254: Summary Judgment hereby is granted in favor of the plaintiffs (petitioners) and against the defendants (respondents). A writ of habeas corpus hereby issues and the respondents hereby are directed forthwith to apply the credits awarded to the petitioners on July 16, 1990 under Va. Code §53.1-191 against each respective petitioner's Mandatory Parole Release Date (MPRD) which was in effect on July 16, 1990 and to make such other time calculations as to conform therewith. In addition, respondents shall credit the time specified under Va. Code §53.1-199 to the parole eligibility date of petitioner, Jones.[1]

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[1]As Coffin is already on parole and as Doyle's parole eligibility date already has accrued, and claims of these petitioners under 28 U.S.C. § 2254 and 42 U.S.C. § 1983 seeking the application of the credit toward their parole eligibility dates has become moot.

2) CLAIMS UNDER 42 U.S.C. § 1983: Summary judgment hereby is granted in favor of the plaintiffs and against the defendants on their claims based on violations of their substantive due process rights under the Fourteenth Amendment, but in favor of the defendants and against the plaintiffs on their claims under the Eighth, Ninth and Tenth Amendments and under Art.1, Sec. 8, Cl. 3 of the Constitution of the United States. In addition, summary judgment hereby enters in favor of the defendants and against the plaintiffs on all claims for monetary relief as such is barred by qualified immunity,[2] but in favor of the plaintiffs and against the defendants for declaratory and injunctive relief as follows:

a) The court hereby declares that the method by which defendants applied the credits awarded to plaintiffs pursuant to Va. Code §53.1-191 and §53.1-199 violated plaintiffs' Due Process rights under the Fourteenth Amendment.

b) Defendants hereby are enjoined to apply such credits to all plaintiffs as set forth in paragraph 1) above.

3) STATE LAW CLAIMS: Summary judgment hereby is granted in favor of the defendants and against the plaintiffs on all claims for declaratory, injunctive and monetary relief under state law either because such relief claims are rendered moot by the action of the court on the federal claims for non-monetary relief or barred under the Eleventh Amendment on the claims for monetary relief. *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984).

The clerk of this court hereby is directed to enter this Final Order both as a Writ of Habeas Corpus under 28 U.S.C. § 2254 and as a Final Judgment on plaintiffs' 42 U.S.C. § 1983 and state law claims and to remove this action from the active docket of the court. Notwithstanding, counsel for Jones and Doyle shall not hereby be prejudiced from seeking and award of counsel fees as may be allowed by law.

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[2]Had defendants not been qualifiedly immune from damages, plaintiffs would have been entitled, at least to consideration on the question of an award of nominal damages under federal law. Since immunity applies, no damages on the federal claim can be awarded.

The Clerk of the Court is hereby directed to send a certified copy of this Order to plaintiffs and to all counsel of record.

ENTERED: /s/ B. Waugh Crigler
Magistrate Judge

May 5, 1992
Date

A TRUE COPY, TESTE:
Joyce F. Witt, Clerk

By P. Hensley
Deputy Clerk

IN THE UNITED STATES DISTRICT C OURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Harrisonburg Division

DEXTER D. COFFIN, III, et al.,	:	
	:	
Plaintiffs,	:	CIVIL ACTION No.
	:	91-0044-H
v.	:	
	:	
	:	
EDWARD W. MURRAY, et al.,	:	
	:	
Defendants.	:	

FACTS UPON WHICH THE PARTIES HAVE AGREED
AND THOSE FACTS UPON WHICH THERE EXISTS A DISPUTE

Come Now the parties, by and through their respective counsel and, in the case of plaintiff Dexter D. Coffin, III, in proper person and, in accordance with paragraph 2 of the Court's February 10, 1992 Order, submit the facts enumerated below in Section I upon which they agree and those facts, set forth in Section II below, upon which there remains a genuine dispute.

I. Stipulated Facts

1. The letters "PED" are defined as the "parole eligibility date."

2. The letters "MPRD" are defined as the "mandatory parole release date."

3. The letters "GCA" are defined as the "good conduct allowance."

4. The letters "ICC" are defined as the "Institutional Classification Committee."

5. The letters "CCB" are defined as the "Central Classification Board."

6. Defendant Edward W. Murray is the Director of the Virginia Department of Corrections (DOC); defendant Edward C. Morris is the Deputy Director of Institutional Services of the DOC; and, defendant Lou Ann White is the Manager of the Court and Legal Unit of the DOC.

7. The Court and Legal Unit, in part, is charged with and responsible for the maintenance of Virginia inmates' records and for the computation and application of credits against the sentences of Virginia inmates.

8. Either the Director of the Deputy Director posses the authority to override a decision made by the CCB or an administrative decision of the Court and Legal Unit. They do not have the authority to override a decision made by Court and Legal that is based upon statues.

9. Prior to the institution of this lawsuit, plaintiffs Coffin, Doyle and Jones each exhausted and satisfied both the administrative and the state-court remedies available to them.

10. Except where specifically exempted by statute, Virginia state inmates have a opportunity to earn good conduct credits based on the governing statute.

11. All Virginia inmates have the opportunity to provide extraordinary assistance to the Commonwealth which might then result in an additional credit being applied toward their terms of confinement.

12. Good conduct credits are applied to reduce the aggregate sentence(s) inmates have been ordered to service in both state and local correctional facilities.

13. The parole eligibility date is the date upon which an inmate is eligible for discretionary parole release consideration by the Virginia Parole Board.

14. An inmate has no absolute right to discretionary release on parole by the Virginia Parole Board.

15. After an inmate has achieved parole eligibility, annual parole review are conducted until the inmate is either released on discretionary or mandatory parole.

16. The mandatory release date in the date upon which an inmate must be released to the supervisions of the Division of Community Corrections.

17. Upon his mandatory release, an inmate remains under parole supervision for a minimum period of six months, pursuant to Section 53.1-159.

18. An inmate does not have an absolute right to be released from the custody of the DOC upon reaching his MPRD. Pursuant to Section 53.1-199, the board may delay the release for up to six months. However, any period of delay would be credited against the inmate's remaining term of confinement.

19. Pursuant to Section 53.1-156, "[t]he period of parole which shall be fixed by the Board may be greater than the unserved portion of the sentence actually imposed upon the paroled prisoner by the court or jury which fixed his sentence." It is within the Board's discretion to fix the period of parole.

20. Please explain the method of computing an inmate's PED.

ANSWER: See Affidavits of Lou Ann White previously filed.

21. Please explain the method of computing an inmate's MPRD.

ANSWER: See Affidavits of Lou Ann White previously filed.

22. Inmates who committed their offenses on or after July 1, 1981, are automatically in the GCA program.

23. Plaintiffs Coffin, Doyle, and Jones all committed their offenses after July 1, 1981, and therefore were automatically under the GCA system.

24. The GCA program offers inmates four levels of earning good-conduct credits.

(a). The GCA Level I offers inmates credits at the rate of 30 days for each 30 days actually served.

(b). GCA Level I offers inmates credits at the rate of 20 days for each 30 days actually served.

(c). GCA Level III offers inmates credits at the rate of 10 days for each 30 days actually served.

(d). GCA Level IV offers inmates no additional days' credits for each 30 days actually served.

25. The stated purpose of the GCA system is to reward positive behavior and adjustment.

26. DISPUTED. See Section II below.

27. Reviews of inmate's GCA levels, by written policy, are normally conducted on an annual basis.

28. Changes in inmate's GCA levels are generally made effective the month of their annual review date.

29. DISPUTED. See Section II below.

30. DISPUTED. See Section II below.

31. If an inmate, previously assigned to GCA Level II, is reviewed and his GCA assignment is increased to GCA Level I, absent an approved forfeiture, the inmate retains those credits earned while assigned to GCA Level II and the new credits earned upon his assignment to GCA Level I commence on the date the increase in the FCA is made effective.

32. Inmates may not forfeit accumulated GCA credits except when they have been found guilty of violating a prison rule or regulation.

33. The GCA level assigned to an inmate may be changes in accordance with DOP 806.

34. Inmates' GCA level assignments are recommended by the ICC.

35. The recommended GCA level assignments are subject to approval by the Warden of the institution or facility in which the inmate is confined.

36. Approved GCA level assignments are implemented by the Court and Legal Unit of the DOC.

37. The Court and Legal Unit periodically provides inmates with documents entitled "Legal Update" when, for example, there has been a change in the inmate's GCA level assignment.

38. DISPUTED. See Section II below.

39. The Virginia Board of Corrections, upon and with the consent of the Governor, may award an inmate a credit towards his term of confinement, in addition to those earned under the GCA system.

40. The credits referred to in question number 39 are authorized in accordance with Section 53.1-191 of the Code of Virginia and are the subject of VDOC DOP 810.

41. DOP 810 is the only operating procedure promulgated concerning credits awarded pursuant to Section 53.1-191, Code of Virginia.

42. Credits awarded inmates under Section 53.1-191, Code of Virginia, are not subject to forfeiture in the event the inmate subsequently violates a prison rule or regulation.

43. Credits awarded inmates under Section 53.1-191, Code of Virginia, are not subject to forfeiture in the event the awarded inmate escapes custody and is recaptured.

44. The application of a sentence reduction by a credit awarded to an inmate by the Board of Corrections, with consent of the Governor, is controlled by Section 53.1-191.

45. DISPUTED. See Section II below.

46. Neither the VDOC nor its employees, has control over credits awarded to inmates by the Board of Corrections under Section 53.1-191, Code of Virginia, except with regard to making a recommendation for such a credit and, further, to making the mathematical application of such a credit against an inmate's term of confinement.

47. DISPUTED. See Section II below.

48. On or about July 16, 1990 the Board of Correction, with the consent of the designee of the Governor, notified the VDOC that it had awarded Dexter D. Coffin, II, Thomas K. Doyle, and Thomas L. Jones credits of thirty-six (36) months each.

49. DISPUTED. See Section II below.

50. With respect to the application of the credits in issue, none of Coffin, Doyle, or Jones was granted an administrative hearing or otherwise permitted an opportunity to be heard relative to the application of the credits.

51. On or about September 18, 1990 Edward W. Murray, Edward C. Morris, and Lou Ann White each received a letter dated September 17, 1990 from Dexter D. Coffin, II in which Coffin complained of the application of his credit awarded by the Board of Corrections to the period remaining upon which he is to be supervised on parole.

52. Defendant Lou Anne White executed Affidavits used in support of the Respondent's dispositive motions with respect to each of the plaintiffs' states habeas corpus actions.

53. Both the Director and the Deputy Director of the Virginia Department of Corrections possesses the authority to override decisions made by the Court and Legal Unit.

54. Virginia Code Section 53.1-199 refers directly to confined persons.

55. By Memorandum dated November 2, 1990, the Post Release Unit of the Probation and Parole Support Services notified

Thomas E. Wilson, Chief of Parole and Probation District 9, that plaintiff Coffin's date of release from parole supervision would be March 26, 1993.

56. According to the files and records of the VDOC, plaintiff Doyle's current MPRD is specified as December 10, 1994.

57. According to the files and records of the VDOC, plaintiff Jones' current PED is September 20, 1992, as of March 12, 1992. His current MPRD is March 17, 2011.

II. Facts In Dispute

26. Plaintiffs Version: Good-conduct credits earned under the GCA system are used to reduce the term of confinement of the criminal sentence(s) imposed upon inmates.

Defendants' Version: Good-conduct credits earned under the GCA system serve to reduced the amount of time an inmate must serve towards PED and MPRD. The credits earned in the GCA system, do not reduce the time imposed by the court.

29. Plaintiffs' Version: GCA credits are applied toward to the total aggregate sentence inmates are required to serve before they may be released from custody.

Defendants' Version: GCA credits are applied to the amount of times an inmate must serve for PED and MPRD. No reduction of GCA is taken from an inmate's total sentence or previously estimated PED or MPRD.

30. Plaintiffs' Version: The MPRD is computed by subtracting from the aggregate sentence(s) imposed upon an inmate, all credits he has been awarded or earned from any source recognized by law. To the resulting date is then added an additional 6 months which the inmate must serve on mandatory parole before the completion of his sentence(s).

Defendants' Version: The MPRD is computed by first subtracting 6 months from an inmate's term of confinement. Any jail credits are then taken out of the time remaining and the remaining sentence is then multiplied by the projection factor (the projection factor is based upon the inmate remaining in his assigned GCA level for the remainder of his sentence). This is added to the sentence start date to get the MPRD. MPRD is not six months earlier than the good time release date, but is earlier than that date by the amount of time it would take the inmate to satisfy six months, considering his GCA level.

38. Plaintiff's Version: An inmate may rely upon the MPRD identified in the "Legal Update" most recently provided to him as the date upon which he will be released from physical custody on a term of 6 months mandatory parole supervision assuming that the inmate is not released on discretionary parole prior thereto, the inmate does not forfeit accumulated good conduct credits for the subsequent violation of any prison rules or regulations, the inmate's Good Conduct Allowance level is not subsequently altered, or the inmate is not the subject of sentence imposed subsequently upon him while confined, by any court of law.

Defendants' Version: An inmate's MPRD is an anticipated date which is projected and subject to change. The inmate cannot rely on this as the date he will be released from custody.

45. Plaintiffs' Version: There is no Virginia statute delineating how a credit awarded to an inmate under Section 53.1-191, Code of Virginia, but who is on parole instead of in custody, is to be applied to that inmate's remaining period of parole supervision.

Defendants' Version: Any credit allowed under the provisions of Section 53.1-191 is applied as provided in Section 53.1-199. Section 53.1-199 is related to the application of good conduct allowance to remaining custody and has no application to a person currently on parole.

47. Plaintiffs' Version: Other than with respect to the aggregate of the specific sentence(s) imposed, during any given time an inmate is serving his sentence(s), the term "maximum term of confinement" refers to that period remaining before the inmate achieves his MPRD.

Defendants' Version: After review of this statement, we are unable to determine the meaning of the statement.

49. Plaintiffs' Version: The Court and Legal Unit applied the credits referred to in number 48 above to Coffin, Doyle, and Jones' then-remaining terms of parole supervision or confinement.

Defendants' Version: The Court and Legal Unit applied the 36 month credit to Coffin's, Doyle's, and Jones', respective then remaining term of confinement.

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CERTIFICATE OF SERVICE

We hereby certify that exact copies of the foregoing Facts Upon Which The Parties Have Agreed And Those Facts Upon Which There Exists A Dispute have been furnished to Steven D. Rosenfield, Esquire, Counsel for Plaintiffs Doyle and Jones, 917 E. Jefferson Street, Charlottesville, Virginia 22902; to Dexter D. Coffin, III, 707 E. Jefferson Street, Charlottesville, Virginia 22902, appearing pro se; and, to William R. Coleman, Esquire, Assistant Attorney General, Counsel for the Defendants, 101 No. 8th Street, Richmond, Virginia 23219 on this 1st day of April 1992.

/s/ Steven D. Rosenfield
Steven D. Rosenfield

/s/ William R. Colemen
William R. Coleman

/s/ Dexter D. Coffin, III
Dexter D. Coffin, III

TABLE 1

THE DEFENDANTS' APPLICATION OF § 53.1-191 CREDITS TO THE PLAINTIFFS

	DATE OF GCA ASSIGNMENT	GCA LEVEL ASSIGNED	MPRD OR PAROLE EXPIRATION DATE	CREDIT AWARDED JULY 16, 1990	REVISED MPRD OR PAROLE EXPIRATION DATE AFTER JULY 16, 1990
JONES	April 16, 1987 [1]	I	September 15, 2012	36 Months	March 17, 2011
DOYLE	January 19, 1989	I	June 10, 1996	36 Months	December 10, 1994
COFFIN	July 3, 1987	I	December 27, 1994	36 Months	March 26, 1993

1. Jones was reduced to class IV for 6 days in May, 1988.

TABLE 2

THE DEFENDANTS' APPLICATION OF § 53.1-191 CREDITS

	TIME TO MPRD	GOVERNOR'S AWARD	GCA LEVEL AT AWARD[1]	PROJECTION FACTOR	REMAINDER TO MPRD
INMATE GOOD	5 Years	36 Months	Class I	.5[2]	42 Months
INMATE BAD	5 Years	36 Months	Class IV	N/A	24 Months

1. GCA Class I is 30/30 (30 days extra credit / 30 days actually served.)
2. Defendants' memorandum, P.3, paragraph 8.

TABLE 3
VIRGINIA BOARD OF CORRECTIONS
SENTENCE REDUCTION GUIDELINES

	LOW RISK (REPORTED INCIDENT, ETC.)	MODERATE RISK (MAY JEOPARDIZE PERSONAL SAFETY)	HIGH RISK (EXPOSED SELF TO RISK OF INJURY & / OR PERSONAL SAFETY OR PREVENT DEATH/ SERIOUS INJURY)
Assist Sick or Injured Inmate	*6-12*	—	—
Assist Sick or Injured Officer	*12-18*	*18-24*	*24-36*
Prevent Suicide	*12-18*	*18-24*	*24-36*
Distinguish Fire/Prevent Equipment Loss	*3-6*	*6-12*	*12-24*
Assist During Accident	*3-6*	*6-12*	*12-24*
Turn in Firearm	*6-9*	*9-12* (Outside perimeter)	*12-24* (Inside perimeter)
Turn in Knife, Hack Saw, Cutting Tool	*6-12*	—	—
Turn in Non-lethal Weapon	*3-6*	—	—
Turn in Security Keys, Class A Tool	*9-12*	*12-18*	—
Turn in Contraband	*6-9*	*9-12*	*12-18*
Provides Reliable Information on Staff	*6-9*	*9-12*	*12-18*
Recover Lost or Stolen Property	*3-6*	*6-9* ($ 100 / less)	*12-18* ($ 100 / over)
Provides Reliable Information on Drugs, Etc.	*6-9*	*9-12*	*12-18*
Provides Reliable Information on Escape Plot	*12-18*	*18-24*	*24-36*
Inmate Testifies Voluntary Behalf of Commonwealth	—	—	*18-36*
Inmate Suffers Personal Injury	*3-6* (Minor)	*6-12* (Moderate)	*12-24* (Severe)
Inmate Suffers Permanent Disability	*6-12* (Minor)	*12-24* (Moderate)	*24-36* (Severe)
Extraordinary Service-Extenuating Circumstances	—	—	*24-Board Discretion*

TABLE 4

INMATE HELPFUL

THE DEFENDANTS' APPLICATION OF§ 53.1-191 CREDITS

	TIME TO MPRD	GOVERNOR'S AWARD & DATE	GCA LEVEL AT AWARD	PAROLE ELIGIBILITY	REMAINDER TO MPRD
1st §53.1-191 CREDIT	10 YEARS	12 MONTHS JAN. 15, 1990	CLASS I	OCTOBER 2, 1989	9 YEARS
2nd § 53.1-191 CREDIT	10 YEARS	12 MONTHS AUG. 5, 1991	CLASS I	OCTOBER 2, 1989	9 YEARS